

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



ORIGINAL

75-7672

## United States Court of Appeals

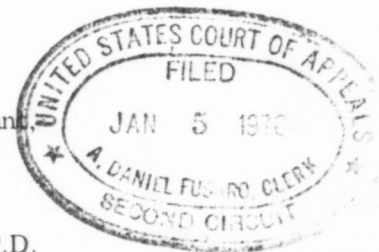
For the Second Circuit.

PANAGANGELOS ANTYPAS,

Plaintiff-Appellant,

-against-

CIA. MARITIMA SAN BASILIO, S.A., and P.D.  
MARCHESSINI AND CO. (HELLAS) LTD. and P.D.  
MARCHESSINI AND CO. (NEW YORK), INC. and the SS  
EURYBATES, her boats, engines, tackle and apparel,  
Defendants-Respondents.



B

P/S

### Appellant's Appendix

LEBOVICI & SAFIR  
Attorneys for Plaintiff-Appellant  
15 Maiden Lane  
New York, N.Y. 10038  
(212) 233-6165

5  
2/3

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JUDGE METZNER

72

405

TITLE OF CASE

ATTORNEYS

Plaintiff.

v8

Budin, ~~Budin~~ & ~~Budin~~

291 ~~Broadway~~

New York, N.Y. 10007

964-2210

7-16-75 subst.

Lebovici &amp; Safir

15 Maiden Lane, NYC 10038

BE 3-6165

A. MARITIMA SAN BASILLO S.A. and  
D. MARCHESSINI & Co. (HELLAS) LTD. and  
D. MARCHESSINI & CO. (NEW YORK) INC. and  
"EUREYBATES", her boats, engines, tackle, and apparel.

Defendants.

Poles Tublin Patestides & Stratakis

~~37 Wall St., NYC 10005 - WH 4-0580~~

46 Trinity Place, NYC 10006 - 943-0110

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISH.
5 mailed X	Clerk		6-2-77		
6 mailed	Marshal				
Admiralty					
is of Action: P.I. Jones Act	Docket fee				
\$350,000.00	Witness fees				
ion arose at:	Depositions				

A

73 207

DATE	PROCEEDINGS	Date Ord Judgment
Oct. 2-73	Filed Summons and Complaint.	315..
Nov. 28-73	Filed Summons w/ Marshal's return served on Lamorte Burns & Co., by J. Budin, 11/19/73 and Lamorte Burns & Co., Inc. by Paul Budia on 10/25/73	
Mar-13-74	Filed stip. and order that the time for defendants to answer is ext. to 4-15-74 - Metzner, J.	
Apr-17-74	Filed ANSWER of defts' Cia Maritima San Basillo SA., P.D. Marchessini and Co., (Hellas) Ltd., P.D. Marchessini and Co. (New York) and SS Eurybates.	PTP
02-06-75	Filed deft. Cia Maritima San Basillo SA.- et. al.'s answers to interrog.	
03-05-75	Filed notice of change of address of Attorney for deft.	
03-02-75	PRE-TRIAL CONFERENCE HELD BY Metzner, J.	
07-16-75	Filed motion to substitute counsel and order substituting Attorney of record for plaintiff Metzner, J.	L&S
08-01-75	Filed defts' affdvt. and notice of motion for an order dismissing the complaint and granting summary judgment in favor of the defts etc. ret. on August 13, 1975 at 9:30 a.m.	
08-01-75	Filed defts' memorandum of law in support of defts' motion for summary judgment and to dismiss.	
07-04-75	PRE-TRIAL CONFERENCE HELD BY Metzner, J.	
08-20-75	Filed pltf's affdvt. of Herbert Lebovici in opposition to the defts' motion for summary judgment.	
08-20-75	Filed pltf's memorandum in opposition to defts' motion to dismiss this case.	
08-20-75	Filed pltf's opposing exhibits.	
08-25-75	Filed stip. and order adj. motion to dismiss to 8-20-75 -- Metzner, J.	
08-28-75	Filed defendants' reply affidavit of Alan Van Praag.	
09-02-75	Filed plaintiff's response to deft's reply memorandum.	
09-02-75	Filed plaintiff's affdvt. of Herbert Lobocici in response to reply affdvt. of deft.	
11-14-75	Filed OFINION #43396...The action is dismissed on the ground of <u>forum non conveniens</u> on condition that (1) defendants submit to the jurisdiction of the Greek courts, and (2) waive any defense of the statute of limitations as to any claims against them. So ordered. -- Metzner, J. M.D.	
12-08-75	Filed pltf's notice of appeal to the USCA for the 2nd Circuit from order dismissing the complaint	
11-28-75	Filed letter by Poles Tublin Patestides & Stratakis to Judge Metzner dated 11-26-75 that client has authorized Attorneys to agree to the conditions recited in the Court's order.	
12-11-75	Filed notice that the record on appeal has been certified and transmitted to the USCA for the 2nd Circuit	
12-08-75	Filed plaintiffs demand for interrog	

COMPLAINT

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

PANAGANGEI ANTYPAS :

CIVIL ACTION

vs. :

73 Civ 4205 CMM

CIA MARITIMA SAN BASILLO S. A. :

and :

P. D. MARCHESSINI AND CO.  
(HELLAS) LTD. :

and :

P.D. MARCHESSINI AND CO.  
(NEW YORK) INC. :

and :

SS "EURYBATES", her boats,  
engines, tackle, and apparel :

NO.

COMPLAINT IN REM AND IN PERSONAM

(Action by Merchant Seaman Without Pre-  
Payment of Costs Pursuant to 28 USC 1916)

(JURY TRIAL WAIVED)

FIRST CAUSE OF ACTION

1. Plaintiff was and is a citizen of Greece.
2. Defendants are corporations
3. The SS "Eurybates" is a vessel engaged in foreign commerce and flying the flag of Greece.
4. Defendants owned, operated, managed and controlled the SS "Eurybates" at all times relevant hereto.
5. Ultimate ownership, management and control of the said vessel was by American business interests or citizens.

6. This suit is based upon the general maritime law and the Jones Act, 46 U.S.C. §688, or in the alternative, the applicable laws of Greece.

7. This Complaint is being filed as if the SS "Eurybates" were presently within the admiralty and maritime jurisdiction of this Court.

8. This is a maritime cause of action within the meaning of Rule 9(h)

9. That on or about the 27th day of May, 1971, plaintiff joined the said vessel in the capacity of oiler at the rate of 78.84 pounds plus overtime.

10. That in June, 1972, while the said vessel was in navigable waters, plaintiff sustained severe injuries resulting in the loss of his left eye and other serious head injuries.

11. That the said occurrence was due to the negligence of the defendants, by their agents, servants and employees, and the unseaworthiness of the vessel.

12. That as a result of the occurrence, plaintiff has been disabled and has required extensive medical treatment; that he will continue to be disabled and require medical treatment in the future.

WHEREFORE, plaintiff claims damages against defendants in the sum of \$350,000.00

#### SECOND CAUSE OF ACTION

13. Plaintiff incorporates by reference Paragraphs 1

through 12 of the First Cause of Action and makes a part hereof as if fully set forth at length.

14. That as a result of plaintiff's injuries in the service of his vessel he became entitled to maintenance and cure.

15. That upon information and belief, defendants have not furnished plaintiff with all maintenance and cure to which he is entitled.

16. That defendants' refusal to pay maintenance and cure is arbitrary and capricious and plaintiff is entitled to counsel fee and costs in addition to his maintenance and cure.

WHEREFORE, plaintiff claims damages in such amount as this Honorable Court shall deem just and proper.

BUDIN, BUDIN AND BUDIN, P.C.

By: Paul W. Budin  
Attorneys for Plaintiff

ANSWER

Defendants, CIA MARITIMA SAN BASILLO S.A., P. D. MARCHESSINI AND CO., (HELLAS) LTD., P. D. MARCHESSINI AND CO. (NEW YORK) INC., and S. S. "EURYATES", her boats, engines, tackle and apparel, by their attorneys, POLES, TUBLIN, PATESTIDES AND STRATAKIS, answering the complaint allege upon information and belief:

AS AND FOR AN ANSWER TO  
THE FIRST CAUSE OF ACTION

FIRST: Defendants admit the allegations contained in Paragraph First of the Complaint.

SECOND: Defendants admit that CIA MARITIMA SAN BASILLO S.A., P. D. MARCHESSINI AND CO. (HELLAS) LTD., and P. D. MARCHESSINI AND CO. (NEW YORK) INC., are corporations. Defendants deny each and every other allegation contained in Paragraph Second of the Complaint.

THIRD: Defendants admit the allegations contained in Paragraph Third of the Complaint.

FOURTH: Defendants admit the CIA MARITIMA SAN BASILLO S.A. owns, operates, manages and controls the S. S. "EURYATES" at all time relative hereto. Defendants deny each and every other allegation contained in Paragraph Fourth of the Complaint.

FIFTH: Defendants deny each and every allegation contained in Paragraph Fifth of the Complaint.

SIXTH: Defendants admit that the laws of Greece are applicable. Defendants deny each and every other allegation contained in Paragraph Sixth of the Complaint.

SEVENTH: Defendants deny each and every allegation contained in Paragraph Seventh of the Complaint.

EIGHTH: Defendants deny each and every allegation contained in Paragraph Eighth of the Complaint.

NINTH: Defendants admit that on or about the 27th day of May, 1971, plaintiff joined the said vessel in the capacity of oiler. Defendants deny each and every other allegation contained in Paragraph Ninth of the Complaint.

TENTH: Defendants deny each and every allegation contained in Paragraph Tenth of the Complaint.

ELEVENTH: Defendants deny each and every allegation contained in Paragraph Eleventh of the Complaint.

TWELFTH: Defendants deny each and every allegation contained in Paragraph Twelfth of the Complaint.

AS AND FOR AN ANSWER TO  
THE SECOND CAUSE OF ACTION

THIRTEENTH: Defendants repeat and reallege each and every allegation contained in Paragraphs First through Twelfth of this answer with the same force and effect as if the same

were fully set forth herein.

FOURTEENTH: Defendants deny each and every allegation contained in Paragraph Fourteenth of the Complaint.

FIFTEENTH: Defendants deny each and every allegation contained in Paragraph Fifteenth of the Complaint.

SIXTEENTH: Defendants deny each and every allegation contained in Paragraph Sixteenth of the Complaint.

FURTHER ANSWERING THE COMPLAINT  
AND AS A FIRST SEPARATE AND COMPLETE  
DEFENSE, DEFENDANTS RESPECTFULLY ALLEGE:

SEVENTEENTH: Defendants repeat and reallege each and every allegation contained in Paragraphs First through Sixteenth of this answer with the same force and effect as if the same were fully set forth herein.

EIGHTEENTH: That this Court does not have jurisdiction of the subject matter of this action between plaintiff and the defendants herein.

FURTHER ANSWERING THE COMPLAINT  
AND AS A SECOND SEPARATE AND COMPLETE  
DEFENSE, DEFENDANTS RESPECTFULLY ALLEGE:

NINETEENTH: Defendants repeat and reallege each and every allegation contained in Paragraphs First through Eighteenth of this answer with the same force and effect as if same were fully set forth herein.

TWENTIETH: Whatever injuries were sustained by the

plaintiff at the time and on the occasions set forth in the complaint were caused and occasioned wholly and solely by the fault, neglect and want of care of the plaintiff.

FURTHER ANSWERING THE COMPLAINT  
AND AS A THIRD SEPARATE AND COMPLETE  
DEFENSE, DEFENDANTS RESPECTFULLY ALLEGE:

TWENTY-FIRST: Defendants repeat and reallege each and every allegation contained in Paragraphs First through Twentieth of this answer with the same force and effect as if set forth fully herein.

TWENTY-SECOND: Whatever injuries were sustained by the plaintiff at the time and on the occasions set forth in the complaint were caused and occasioned in part by and were contributed to by the negligence and carelessness of the plaintiff.

FURTHER ANSWERING THE COMPLAINT AND  
AS A FOURTH SEPARATE AND COMPLETE  
DEFENSE, DEFENDANTS RESPECTFULLY ALLEGE:

TWENTY-THIRD: Defendants repeat and reallege each and every allegation contained in Paragraphs First through Twenty-Second of this answer with the same force and effect as if fully set forth herein.

TWENTY-FOURTH: The complaint fails to state a claim upon which relief can be granted.

FURTHER ANSWERING THE COMPLAINT AND  
AS A FIFTH SEPARATE AND COMPLETE  
DEFENSE, DEFENDANTS RESPECTFULLY ALLEGE:

TWENTY-FIFTH: Defendants repeat and reallege each and every allegation contained in Paragraph First through Twenty-Fourth with the same force and effect as if fully set forth herein.

TWENTY-SIXTH: Plaintiff had knowledge of and assumed the risks incident to his employment, and the injuries alleged to have been sustained by him were caused by and arose out of such risks.

FURTHER ANSWERING THE COMPLAINT AND  
AS A SIXTH SEPARATE AND COMPLETE  
DEFENSE, DEFENDANTS RESPECTFULLY ALLEGE:

TWENTY-SEVENTH: Defendants repeat and reallege each and every allegation contained in Paragraphs First through Twenty-Sixth of this answer with the same force and effect as if fully set forth herein.

TWENTY-EIGHTH: That the plaintiff herein is a citizen and resident of a country other than the United States; that the vessel S. S. "EURYBATES", is a vessel not of United States registry and ownership; that the vessel owner, CIA MARITIMA SAN BASILLO S. A., is a corporation organized and existing under the Laws of the Republic of Panama; that the articles of contract of employment

between the plaintiff and the vessel do not provide for the operation of any of the laws of the United States; and that the plaintiff's alleged injuries occurred while the aforesaid vessel was not within the admiralty or maritime jurisdiction of the United States.

TWENTY-NINTH: That by reason of the premises, the present action cannot be maintained here and this plaintiff cannot maintain this suit against the defendants herein under the provisions of any statutes or regulations now in force in the United States or any of its possessions.

FURTHER ANSWERING THE COMPLAINT AND  
AS A SEVENTH SEPARATE AND COMPLETE  
DEFENSE, DEFENDANTS RESPECTFULLY ALLEGE:

THIRTIETH: Defendants repeat and reallege each and every allegation contained in Paragraphs First through Twenty-Ninth of this answer with the same force and effect as if fully set forth herein.

THIRTY-FIRST: That Defendant, CIA MARITIMA SAN BASILLO S. A., is a corporation organized and existing under the laws of the Republic of Panama and is not subject to service of process within the district of the Southern District of New York, nor within the State of New York.

THIRTY-SECOND: Defendants, P. D. MARCHESSINI AND CO. (HELLAS) LTD., is a corporation organized and existing under the laws of the Republic of Greece and is not subject to service of process within the district of the Southern District of New York,

WHEREFORE, Defendants demand that the complaint be dismissed, with costs against the plaintiff and such other and further relief as the justice of the cause may require.

Dated: New York, New York  
April 11, 1974

POLES, TUBLIN, PATESTIDES & STRATAKIS

By: \_\_\_\_\_

A Member of the Firm

Attorneys for Defendants  
37 Wall Street  
New York, New York 10005  
944-0580

DEFENDANTS' NOTICE OF MOTION  
FOR JUDGMENT

PLEASE TAKE NOTICE that pursuant to Rule 12(b) and Rule 56 of the Federal Rules of Civil Procedure and upon the Affidavit of ALAN VAN PRAAG, sworn to the *1st* day of *August*, *1975*, and the exhibits attached thereto, and upon the pleadings and all other papers and memoranda filed herein, the undersigned will move this Honorable Court at a stated term thereof for the hearing of motions at the Federal Courthouse, Foley Square, New York, New York on the *13th* day of *August*, *1975* at *Room 2201* in the *9:30 AM* or as soon thereafter as counsel can be heard for an Order dismissing the complaint herein and granting summary judgment in favor of the defendants on the grounds of lack of jurisdiction, failure to state a claim upon which relief may be granted, improper service, and upon the further grounds of forum non conveniens.

PLEASE TAKE FURTHER NOTICE that you are required to serve answering affidavits and memorandum of law upon the undersigned at least five (5) days before the return date thereof.

DATED: NEW YORK, NEW YORK  
August 1, 1975.

POLES, TUBLIN, PATESTIDES & STRATANKIS

By: *M. J. Tublin*

A Member of the Firm  
46 Trinity Place  
New York, New York 10006  
(212) 943-0110

To: LEBOVIC & SAFIR  
Attorneys for Plaintiff  
15 Maiden Lane  
New York, New York 10038  
212 BE3-6165

SUPPORTING AFFIDAVIT OF ALAN  
VAN PRAAG

---

STATE OF NEW YORK )  
                          ) ss.:  
COUNTY OF NEW YORK)

ALAN VAN PRAAG, being duly sworn, deposes and says:

1. That he is an attorney and counselor at law associated with the law firm of POLES, TUBLIN, PATESTIDES & STRATAKIS, attorneys for the defendants in the above-entitled action and that as such he is fully familiar with the facts in this action.

2. This affidavit is made in support of a motion seeking to dismiss the complaint herein and grant summary judgment in favor of the defendants on the grounds of lack of jurisdiction, failure to state a claim upon which relief may be granted, improper service and upon the further grounds of forum non conveniens.

3. That as more fully appears from the complaint herein, a copy of which is annexed hereto as Exhibit "1", this action was brought by plaintiff, a foreign seaman, to recover for maintenance and cure and injuries allegedly sustained on June 19, 1972, while employed as a seaman aboard the S.S. "EURYBATES".

4. That as more fully appears from the answer herein, a copy of which is annexed hereto as Exhibit "2", defendants have listed certain defenses to this action among which are lack of jurisdiction of this Honorable Court, improper service, failure

to state a claim upon which relief may be granted, and forum non conveniens.

5. That the plaintiff in this action had signed up on board the vessel, S.S. "EURYBATES" on May 27, 1971 while the vessel was at Rotterdam the Netherlands. Plaintiff signed on as an oiler pursuant to Greek Articles and remained on board the vessel until repatriated.

6. Defendant, CIA MARITIMA SAN BASILIO S.A., was at all times herein pertinent, a foreign corporation organized and existing under and by virtue of the laws of the Republic of Panama and it owned, operated and controlled the vessel known as the S.S. "EURYBATES". None of its stock was owned by any citizen of the United States or of the State of New York, and it merely utilized defendant, P. D. MARCHESSINI AND CO. (NEW YORK) INC., as an agent whenever the vessel called at United States ports. The transaction of business within the State of New York by defendant, CIA MARITIMA SAN BASILIO S.A., is more fully amplified in the accompanying affidavit of Paul A. Ganteaume which is annexed hereto as Exhibit "3".

7. With regard to the defendant, P. D. MARCHESSINI AND CO. (HELLAS) LTD., it is a limited company organized and existing under and by virtue of the laws of the Republic of Greece. None of its stock was owned by a citizen of the United States or of the State of New York. At all times pertinent, it acted as an agent for defendant, CIA MARITIMA SAN BASILIO S.A., for vessels calling upon Greek ports, and at no time did it act as plaintiff's employer.

8. With regard to defendant, P. D. MARCHESSINI AND CO. (NEW YORK) INC., it is a domestic corporation organized and existing under and by virtue of the laws of the State of New York, having a place of business at 26 Broadway, New York, New York. At all times herein pertinent it acted as an agent for defendant, CIA MARITIMA SAN BASILIO S.A., when the vessel called in the United States. It has been joined as a party defendant in this action as a ploy on the part of the plaintiff to obtain jurisdiction before this Honorable Court. At no time did it act as plaintiff's employer, nor did it ever act as a general agent for defendant, CIA MARITIMA SAN BASILIO S.A., or to act in such capacity as to qualify for service of process pursuant to the Federal Rules of Civil Procedure. P. D. Marchessini and Co. (New York) Inc. had no authority to accept service of process on the other defendants herein. Therefore, attempted service of process on the other defendants through P. D. Marchessini and Co. (New York) Inc. was a nullity.


9. That the vessel known as the S.S. "EURYBATES" at all times herein pertinent was registered in the Republic of Liberia and flew the Liberian flag. None of its crew members were residents or citizens of the United States.

10. That at the time of plaintiff's alleged accident on board the vessel, i.e., June 19, 1972, the S.S. "EURYBATES" was in international waters. Further, the plaintiff herein was a foreign seaman who signed on board the S.S. "EURYBATES" while the


vessel was in a foreign port. All medical treatment and medical records took place or are located outside the United States. Any witness to the alleged accident would be a foreign national who would be located outside the United States, or sailing aboard foreign flag vessels. According to paragraph "1" of plaintiff's complaint previously annexed hereto as Exhibit "1", plaintiff was a citizen of the Republic of Greece.

11. That in view of the above facts, it is respectfully submitted that this Honorable Court lacks jurisdiction; that the complaint fails to state a cause of action against the defendants; that P.D. MARCHESSINI AND CO. (NEW YORK) INC., is an improper party for receipt of service of process and that the court should dismiss the action on the grounds of forum non conveniens.

WHEREFORE, it is respectfully submitted that the complaint should be dismissed and that defendants be granted summary judgment without prejudice to plaintiff commencing suit in Greece against CIA MARITIMA SAN BASILIO S.A., in which place said defendants agree to submit to the jurisdiction and to accept service of process.

  
ALAN VAN PRAAG

Sworn to before me this  
1st day of August, 1975.

  
Notary Public  
Commission filed in New York County  
Commission expires March 30, 1976

SUPPORTING AFFIDAVIT OF PAUL  
A. GANTEAUME

STATE OF NEW YORK     )  
                              :   ss.:  
COUNTY OF NEW YORK    )

PAUL A. GANTEAUME, being duly sworn, deposes and  
says:

1. I am the Vice President of P. D. MARCHESSINI AND  
CO. (NEW YORK) INC., a New York corporation and one of the  
defendants herein, and am familiar with the facts of this  
case.

2. I am making this affidavit in support of the  
defendants' motion for an order dismissing the complaint  
herein and granting summary judgment against the plaintiff,  
on the grounds that P. D. MARCHESSINI AND CO. (NEW YORK) INC.  
did not employ the plaintiff and does not own, operate or  
manage the S.S. "EURYBATES", a Greek flag vessel. Our company  
maintains an office at 26 Broadway, New York, New York.

It is engaged in the business of acting as shipping agents and  
we act as limited agents in this country for P. D. MARCHESSINI  
AND CO., LTD., a British corporation operating out of London.  
Whenever the S.S. "EURYBATES" called at an American port, we  
were requested to appoint the vessel's protecting agents at  
that port and also attend to and follow up on the vessel's  
husbanding functions.

3. Whenever the S.S. "EURYBATES" called at an  
American port we understood, on instructions from Owners, to  
appoint local agents for the purpose of attending to the  
vessel's shoreside needs.

4. With regard to the management and operation of the S.S. "EURYBATES", our company does not perform any of the acts necessary for the exercise of management and control over the vessel. Specifically:

(i) We did not engage any of the vessel's officers or crew; specifically, this plaintiff was not employed by our office.

(ii) We did not decide for the chartering of the S.S. "EURYBATES".

(iii) We did not keep any accounting books or records for the vessel's Owners in this country.

5. P. D. MARCHESSINI & CO. (NEW YORK) INC. has never been appointed as agent for receipt of service of process by either CIA MARITIMA SAN BASILIO S.A. or P. D. MARCHESSINI (HELLAS), LTD.

Neither P. D. MARCHESSINI AND CO. (NEW YORK) INC., nor any of its officers, directors, or employees were either directly or indirectly involved with, or engaged in the management, control, operation or ownership of the S.S. "EURYBATES"

either as individuals or otherwise. Lastly, none of the officers, directors, or shareholders of P. D. MARCHESSINI AND CO. (NEW YORK) INC. were officers, directors, or shareholders of either P. D. MARCHESSINI AND CO. (HELLAS), LTD., or CIA MARITIMA SAN BASILIO S.A.

Paul A. Ganteaume  
Paul A. Ganteaume

Sworn to before me this

23<sup>rd</sup> day of June 1975

William Liebowitz  
Notary Public

WILLIAM LIEBOWITZ  
Notary Public, State of New York  
No. 242360301 - Qual. in Kings Co.  
Certificate filed in New York County  
Commission Expires March 30, 1977

SUPPORTING AFFIDAVIT OF CONSTANTINE  
E. ROUSSOS

---

REPUBLIC OF GREECE       )  
PROVINCE OF ATTICA       :   ss.:  
CITY OF ATHENS           )

CONSTANTINE EPAMINONDAS ROUSSOS, being duly sworn,  
deposes and says:

I am a practicing lawyer in Athens, Greece since 1966. My law office is located at 5-7 Filellinon Street, Piraeus, Greece and am a member of the Athens bar. I am a graduate of the University of Athens and a Master of Laws of the University of London. I am familiar with the theory and practice of admiralty law in Greece and Britain and the greatest bulk of my work in Greece is connected with admiralty and maritime matters.

I am asked to give an opinion as to the remedies available under Greek law to a Greek seaman, who signed on a

Greek flag vessel owned by a Panamanian corporation and who suffered an injury on board whilst the vessel was in the high seas. I understand that the contract of employment, i.e., the ship's articles provided that Greek law is to apply in case of disputes between the contracting parties and that the Greek courts are competent to adjudicate thereon.

In view of the fact that the contract of service provides for application of Greek law, the following remedies are open to the seaman who can:

(a) Claim for wages and medical expenses under Article 66 of the Code of Private Maritime Law [Legislative Decree 3816/1958] reading as follows:

"The seaman when sick is entitled to his wages and medical treatment at the ship's expense and where the contract of

employment is terminated because of his illness and the seaman receives medical treatment ashore he is entitled to medical expenses and to wages during his illness but not exceeding four months. The above provisions shall also apply in the case of accidents due to violent causes and where the seaman by reason thereof became incapable of work, as well as in the case of death, the special provisions relating to indemnity for accidents of employment shall also apply. For the assessment of claims provided for by the present sections special wages may be stipulated."

(b) Claim indemnity under the provisions of statute No. 551 enacted on January 8, 1915, dealing with "liability to indemnify workmen and employees who have suffered an injury at work" as amended. Under the above act a lump sum computed in accordance with specific provisions of the act is awarded to the injured seaman who sustained personal injury on board a ship irrespective of his employer's negligence or his own contributory negligence.

(c) Bring an action in tort and claim damages under the Greek Civil Code [Articles 914, etc.].

With regard to the jurisdiction and competence of Greek courts to adjudicate on an action brought under the above substantive provisions suffice to say that the specific provisions contained in the ship's articles and the contract of employment would automatically render the Greek courts competent.

Furthermore even had there not been an express provision in the above documents regarding the competence of Greek courts to hear disputes under or arising from the contract of employment, the Greek courts would still be competent

and in my opinion, would entertain an action brought by the above seaman in view of the fact that the parties have agreed to the jurisdiction of the Greek courts by their signing of Greek Shipping Articles; Greece would therefore be presumed to be the place of performance of the contract. This is in line with numerous decisions of the Greek courts and also in line with the relevant provisions of the Greek Code of Civil Procedure.

In conclusion, it is my opinion that the above seaman could bring an action before a Greek court for injuries on board the ship and would have an adequate remedy against his employer.

IN WITNESS WHEREOF, I have hereunto set my hand and seal  
this *25th* day of *July*, 1975.

CONSUL OF GREECE )  
DISTRICT OF ATTICA )  
CITY OF ATHENS )  
EMBASSY OF THE )  
UNITED STATES OF AMERICA )

*Constantine Epaminondas Roussos*  
CONSTANTINE EPAMINONDAS ROUSSOS

born to before me this  
*25th* day of *July*, 1975.

*Diana H. Morris*  
Diana H. Morris  
American Consul

SUPPORTING AFFIDAVIT OF GEORGE J.  
GEORGANDOPOULOS

)  
: SS.:  
)

GEORGE GEORGANDOPOULOS , being duly sworn,  
deposes and says:

I am Vice President and Director of CIA MARITIMA SAN  
BASILIO S.A., located at 23, Akti Miaouli, Piraeus, Greece,  
a corporation organized and existing under and by virtue of the  
laws of the Republic of Panama, and one of the defendants  
herein and am familiar with

the facts of this case.

I am making this affidavit in support of the defendant's  
motion for an order of dismissing the complaint herein on the  
grounds of lack of jurisdiction, failure to state a claim upon  
which relief may be granted, improper service and on the  
further grounds of forum non conveniens.

The Company is governed by a Board of Directors whose  
names and nationalities are as follows:

F. D. MARCHESSINI	- GREEK
GEORGE J. GEORGANDOPOULOS	- GREEK
GERASSIMOS CORNELIACOS	- GREEK
PROFIS NIKITTIADIS	- GREEK

None of the directors or shareholders of CIA MARITIMA SAN  
BASILIO S.A. are residents or citizens of the United States  
of AMERICA. Our company is engaged in the shipping business  
and is the owner of the Greek Flag vessel SS EUPYBATES.

Our company has hired P. D. MARCHESSINI AND CO., LTD., of London, England to act as our agent for the transaction of business concerning the SS EURYBATES.

P. D. MARCHESSINI AND CO. (NEW YORK) INC. and my company are in no way connected with each other. None of the officers, directors or shareholders of this corporation are directors, officers or shareholders of CIA MARITIMA SAN BASILIO S.A. Thus, there is absolutely a distinct ~~and separation~~ between P. D. MARCHESSINI AND CO. (NEW YORK) INC., AND CIA MARITIMA SAN BASILIO S.A.

Further, we have no objection to the commencement of an action by the plaintiff in the Courts of Greece.

George J. Georgandopoulos  
GEORGE J. GEORGANDPOULOS

to before me this  
day of

of GREECE )  
of ATTICA )  
of ATHENS ) SS:  
of THE )  
of U.S. OF AMERICA )

Subscribed and sworn to before me,  
the undersigned consular officer  
of the United States of America at  
Athens, Greece, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

SUPPORTING AFFIDAVIT OF A.A. HATZOPOULOS

)  
: ss.:  
)

A. A. HATZOPOULOS , being duly sworn, deposes and says:

I was an administrator of P. D. MARCHESSINI AND CO. (HELLAS) LTD., a Limited Company organized and existing under and by virtue of the laws of the Republic of Greece and one of the defendants herein, located in Piraeus, Greece, and I am fully familiar with the facts of this action.

I am making this affidavit in support of the defendant's motion for an order dismissing the complaint herein and granting summary judgment against the plaintiff on the grounds that P. D. MARCHESSINI AND CO. (HELLAS) LTD. did not employ the plaintiff and does not operate, control, manage or own the SS EURYBATES, a Greek Flag vessel, and further on the grounds of lack of jurisdiction. Subsequent to the commencement of this action, P.D. MARCHESSINI AND CO. (HELLAS) LTD. was dissolved. To date, no successor organization has been formed.

Our company was in the business of acting solely as shipping agents.

Whenever the SS EURYBATES had occasion to call at a Greek port, we acted as the vessel's agent with respect to husbanding other shore-side requirements.

MARCHESSINI AND CO. (HELLAS) LTD. had no office and has never had an office for the conduct of business and has never conducted business in New York or any other place in the United

of America, and has not authorized any one to accept  
of process on its behalf.

*Andri Hatzopoulos*  
A.A. Hatzopoulos

Sworn before me this

of

Notary Public

REPUBLIC OF GREECE  
PROVINCE OF  
CITY OF ATHENS  
EMBASSY OF THE  
UNITED STATES

REPUBLIC OF GREECE  
PROVINCE OF A  
CITY OF ATHENS  
EMBASSY OF THE  
UNITED STATES

Subscribed and sworn to before me,  
the undersigned  
of the  
at  
day of,  
1925

Subscribed and sworn to before me,  
the undersigned consular officer  
of the United States of America at  
Athens, Greece, duly commissioned  
and qualified, this 30th day of,  
May 1925

*Diana E. Morris*

Diana E. Morris  
American Consul

SUPPORTING AFFIDAVIT OF LESLIE MYLAM

UNITED KINGDOM OF GREAT  
BRITAIN and NORTHERN IRELAND  
CITY OF LONDON

) Great Britain and Northern Ireland )  
) London, England ) SS:  
) Embassy of the United States of America )

LESLIE SEYMOUR MYLAM, being duly sworn, deposes and  
says:

I am a Director of P. D. MARCHESSINI & CO., LTD.,  
of Forum House, 15/18 Lime Street, London, E. C. 3, England,  
a corporation organized and existing under and by virtue of  
the laws of the United Kingdom. The company is governed by  
a Board of Directors, whose names and nationalities are as  
follows:

P. D. Marchessini, Greek

L. S. Mylam, British

None of the stockholders of P. D. MARCHESSINI &  
CO., LTD. are residents of or citizens of the United States of  
America and P. D. MARCHESSINI & CO., LTD. has no office for  
doing business in the United States. Our company is engaged  
in the shipping business and are the agents for the owners of  
the S.S. "EURYBATES".

P. D. MARCHESSINI & CO. (NEW YORK) INC. is an  
entirely separate entity from P. D. MARCHESSINI & CO., LTD.

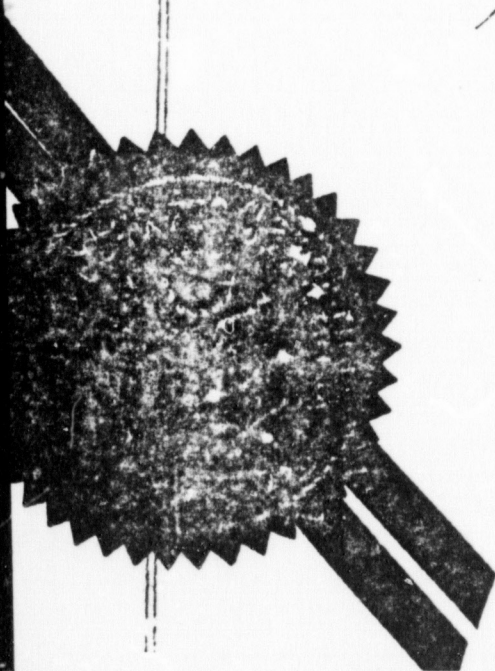
IN WITNESS WHEREOF, I have hereunto set my hand and  
seal this <sup>17th</sup> day of *June* 1975.

*Leslie Seymour Mylam*  
*L. S. Mylam*  
\_\_\_\_\_  
Leslie Seymour Mylam

Subscribed and sworn to before me  
Micaela A. Cella VICE Consul of the  
United States of America at London,  
England, duly commissioned and  
qualified, this seventeenth day  
of June 1975

*Micaela A. Cella*

MICAELA A. CELLA  
Vice Consul of the United States  
of America at London, England



OPPOSING AFFIDAVIT OF HERBERT LEOVIGI

STATE OF NEW YORK  
COUNTY OF NEW YORK

HERBERT LEOVIGI, being duly sworn, deposes and says:

That I am a member of the firm of LEVOW, CHASE & SMITH,  
attorneys for the plaintiff herein, and I submit this affidavit  
in opposition to the defendants' motion for summary judgment.

By way of preface, the within action is one by a merchant  
seaman for personal injuries sustained by him aboard a vessel  
called the "EUREYATES" owned by the defendant CIA. MARITIME SAN  
BASILIO S.A., a Panamanian corporation. The action is brought  
pursuant to the Jones Act and the general maritime law of the United  
States, both of which as will appear from a memorandum of law to  
be submitted herewith, are applicable to the determination of an  
action despite the flag of the vessel (in this case foreign) where  
the contacts of the transaction with the United States are suffi-  
ciently "substantial".

Summary judgment is sought by the defendants upon the  
following stated grounds:

1. Failure to state a claim upon which relief  
may be granted;
2. Lack of jurisdiction [of the subject matter of  
the action];
3. Forum non conveniens, and
4. Improper service.

As will appear from the memorandum of law to be submitted herewith, the making of this application upon the ground of forum non conveniens admits the due and proper service of the process upon the defendants, and for this reason the application in such respect, must immediately fail. Furthermore, it may be noted that even if there were merit to the application, it could not result in dismissal of the complaint, but only in the vacating of the service that was made.

With respect to the application for summary judgment upon the grounds that the court lacks jurisdiction or fails to state a complaint upon which relief may be granted, the merit of the defendants claim is dependent upon the "substantiality" of the transaction with the United States. As the memorandum will show, whether the contacts are substantial enough or not, is itself a question of fact, and not of law, and this affidavit it is believed must demonstrate that the demonstrable contacts are more than sufficient to be "substantial" under the applicable cases.

Finally with respect to the application upon the ground of forum non conveniens, the memorandum will demonstrate that upon a showing of sufficient contacts to warrant the application of the Jones Act or the general Maritime law, that there is no discretion in the court to decline jurisdiction pursuant to the doctrine of forum non conveniens.

For these reasons it is respectfully submitted that the within application must be denied.

THE SHIPOWNER SAN BASILIO HAS OPERATED ITS  
BUSINESS INCLUDING THE EURYBATES FROM A BASE  
OF OPERATIONS IN THE CITY OF NEW YORK

I have been engaged in litigation in various cases with the defendant COMPANIA MARITIMA SAN BASILIO, S.A. almost continuously since 1951. During all of that time the method of operation of the defendant COMPANIA MARITIMA SAN BASILIO, S.A. has been essentially the same. At that time, the SAN BASILIO company was entirely the creature of a United States citizen by the name of P.D. MARCHESSINI. At that time and every since, the SAN BASILIO vessels were characteristically operated, not as tramp vessels, but as vessels operating on regular routes and "liner services" from ports in the United States to other parts of the world. Essentially two in number, these liner services were operated between the east coast of the United States to the Philippines, Hong Kong, Formosa, Japan and Korea, and, between the United States and Europe, traveling between New York to London, Rotterdam and Antwerp and returned. (Exhibit 1 attached hereto, Exhibits 2 and 3.) These Exhibits are isolated samples of advertising for the particular liner services that have been continuous and uninterrupted, from 1951 to 1974. In 1974, the MARCHESSINI LINES under which trade name, SAN BASILIO and a sister corporation both owned and controlled by Mr. P.D. Marchessini operated, were sold (Exhibit 14).

These liner services were expressly operated pursuant to United States law granting exemption from anti-trust law restrictions, and, as appears from documents filed with the Federal Maritime Commission, SAN BASILIO through its New York alter ego P.D. MARCHESSINI & CO. (NEW YORK) INC. duly accepted the benefits of such United States law by filing its joint service agreements with the Federal Maritime Commission and by filing the tariffs for the rates charged upon such liner services. (Exhibits 4 and 5) It is clear that the Federal Maritime Commission considered the MARCHESSINI LINES "a person subject to the Shipping Act of 1916" and that such MARCHESSINI LINES were "operated in the foreign commerce of the United States". (Exhibit 6, page 2)

During all of the relevant times herein, indeed from 1950 to 1974, the SAN BASILIO CORPORATION and the sister corporation the SAN NICHOLAS CORPORATION, did nothing with respect to the operation of the vessel except to hold the title thereto. The central operation of the vessels and of the entire business was conducted by P.D. MARCHESSINI & CO. (NEW YORK) INC. from its offices first at 17 Battery Place and thereafter at 26 Broadway in New York at which address offices are still maintained. The moving affidavit (Mr. Van Praag at page 3 of his affidavit and Mr. Ganteaume at page 2 of his affidavit) makes the claim that P.D. MARCHESSINI & CO. (NEW YORK) INC. was nothing more than a local agent hired by another general agent P.D. MARCHESSINI & CO., LTD. a British

corporation operating out of London. This claim is demonstrably false from the documents and advertising created by the defendant SAN BASILIO and MARCHESSINI (NEW YORK). Thus Exhibit 1 refers to P.D. MARCHESSINI & CO. (NEW YORK) INC. as a "general agent". Exhibit 2 advertising in the New York Journal of Commerce expressly refers to "General agents - P.D. MARCHESSINI & CO. NEW YORK) INC. So too Exhibit 3 refers to "general agents P.D. MARCHESSINI & CO. (NEW YORK) INC.". The tariffs filed with the Federal Maritime Commission show them to have been filed by "U.S.A. general agents P.D. Marchessini & Co. (New York) Inc., J.J. Magrino, Issuing officer, 26 Broadway, New York 4, New York". (Exhibit 5). So too the joint service agreements filed with the Federal Maritime Commission (Exhibit 4). See also the "Nursemaid" advertisement in the New York Times placed there by P.D. MARCHESSINI & CO. (NEW YORK) INC. This is no ineffectual local agent advertising in this fashion. (Exhibits 7 and 9.)

The business of these two liner services was conducted under the trade name of MARCHESSINI LINES. The exhibits indicate positively that MARCHESSINI LINES operated from New York City. But "Marchessini Lines" was owned by SAN BASILIO (Exhibit 14).

From previous litigation it is known exactly how the operation was conducted. P.D. MARCHESSINI & CO. (NEW YORK) INC. collected the freights for the cargos that were carried on the MARCHESSINI LINES. From the freights so collected, P.D. MARCHESSINI & CO. (NEW YORK) INC. paid practically all of the running expenses

of the vessel, paid itself a fee for acting as "agent" and accounted to the SAN BASILIO company, the owner of the vessel, for the balance that was left over constituting the profit for which the operation was conducted. Attached hereto as Exhibit 8 of this affidavit is a copy of one such running account maintained by it with the shipowner SAN BASILIO for a vessel known as the EURYTAN. The vessel herein is of course the EURYBATES. Analysis of Exhibit 8 will show that during the year 1964 the New York corporation collected \$750,000 in freight charges and disbursed \$264,000 for materials, supplies, wages and other expenses, leaving the difference as profit from the operation of the EURYTAN. This accounting which is kept in a customary form similar for all general agents, was demanded by written interrogatories for the vessel in the present litigation, the EURYBATES for the relevant period of time.

Interrogatory 19 of the Interrogatories heretofore propounded by the plaintiff herein requested:

"Set forth a true copy of all voyage account records received, kept or maintained by each of the defendants during the period of plaintiff's employment aboard the vessel."

These interrogatories were served on November 12, 1974.

The response to the interrogatory when provided stated as follows:

"Since the sale of the Eurybates on November 1, 1974, the documents requested cannot be readily located. However, efforts are continuing to locate said documents. In the event said documents are procured a copy of them will be forthwith sent to your office."

It is respectfully submitted that the alleged inability to locate these radio documents is such patent nonsense as to prove only that the defendants are withholding evidence that would prove what the plaintiff is claiming with respect to such evidence.

Indeed, Interrogatories 15 through 18 would have, if they had been answered provided the information from which answer to Interrogatory 19 could have been ascertained. But again, in answering these Interrogatories, the defendants similarly stated that since the sale of the vessel, allegedly 12 days before, none of the documents could be located.

With respect to where the SAN BASILIO company had its "presence" and from where it was doing business, the court is respectfully referred to Exhibit 10, consisting of pages from Register Book of Owners published by Lloyd's Register of Shipping for various years between 1950 and 1972, when the plaintiff herein was injured aboard the Eurybates. The court will notice that for this entire period of time the address for COMPANIA MARITIMA SAN BASILIO, S.A. is listed not as someplace in Panama or in England or Greece or anywhere else. The address for COMPANIA MARITIMA SAN BASILIO, S.A. is c/o P.D. Marchessini & Co. (New York) Inc., 26 Broadway, New York 4, U.S.A. All of this adds up to the necessary conclusion that the defendant SAN BASILIO was operating its business consisting of the ownership of various merchant vessels including the EURYBATES from the City of New York through the instrumentality of the New York corporation P. D. MARCHESSINI & CO. (NEW YORK) INC.

This proof is important, not as establishing the fact that the defendant SAN BASILIO has been served, by service of process on MARCHESSINI (NEW YORK), because such service is admitted by the motion addressed to the subject of forum non conveniens. Such a motion admits the service of summons and the jurisdiction of the court. All of this proof is important however as proving the contention of the plaintiff that the defendant SAN BASILIO was doing its business in the City of New York with the vessel EURYBATES through the instrumentality of MARCHESSINI (NEW YORK) under the trade name of MARCHESSINI LINES.

Opposed to all of this detailed cumulative proof, there is nothing in the moving papers of an evidentiary nature. Even the conclusory statements of the moving parties in the affidavits submitted, are insufficient to support prima facie the moving parties' burden on a motion for summary judgment. By way of evidence, there is an unsupported claim made in the affidavit of counsel for the defendant and the affidavit of George Georgandopoulos on behalf of SAN BASILIO in which it is claimed, that P.D. MARCHESSINI & CO. LTD. of London is the general agent and P.D. MARCHESSINI & CO. (NEW YORK) only a local agent. No evidence or proof to support these contentions are submitted with the moving papers. Attached hereto as Exhibit 11 however are two documents which have not been produced by the defendants and by the very existence of which it

should be clear to the court that the defendants are attempting to play games with the court through the medium of a palpably "wash" transaction. Thus, the first of these two purports to make P.D. MARCHESSINI & CO. of London the general agent for SAN BASILIO. This agreement is dated June 30, 1958. On the same day, another agreement is purported to have been entered into between the alleged general agent, P.D. MARCHESSINI & CO. of London and P.D. MARCHESSINI (NEW YORK), wherein and whereby MARCHESSINI (NEW YORK) is called the "limited agent". These are mere labels

What is significant however is that the agreement between the London and New York corporations purports to give

"the exclusive management and operation in the United States of America of the vessels of the owner to the limited agent and the limited agent is ready and willing to undertake the exclusive management and operation of said vessels"

and, in an addendum to the second contract, the parties recognizing that it would be difficult to claim English participation in the direct commerce between the East coast of the United States and the Far East and back, provide for the appointment of "agents or limited agents in the Far eastern ports, including Japan by Marchessini & Co. (New York)".

Not only does the second of these agreements grant to the so called "limited agent" all the powers and authority that were purported to be vested in the "general" agent in the first agree-

ment, but it further appears from the reading of the two that on performance by the "limited" agent of the services for the owner, it gets paid all of the same remuneration that are contracted for to be paid to the general agent in the first agreement. The whole thing constitutes an outrageous pice of window dressing made for the sole purpose of deceiving whoever might question the fact that the operation was being conducted from the City of New York.

Interestingly enough, the second of these agreements is signed for the New York corporation by P.D. Marchessini himself.

As our memorandum of law will show the operation of these vessels, including the EURYBATES in particular from the City of New York is a sufficiently "substantial" contact with the jurisdiction to warrant the application of United States law to the transaction even though the business is conducted for the shipowner by an agent corporation.

THE CORPORA TE SHIP OWNER IS OWNED BY  
THE STOCKHOLDERS WHO ARE CITIZENS OF THE  
UNITED STATES.

still another and separate contact with the jurisdiction such as to warrant the application of United States law has been held to be the residence or allegiance of the persons holding the stock ownership of the ship owning corporation. Again, counsel for the defendant states at page 2, 46 that none of PASILLO'S stock was owned by any citizen of the United States. This statement is

repeated in the affidavit of Mr. Georgandopoulos on behalf of SAN BASILIO itself. The source of any knowledge that would support this allegation by either of these statements is nowhere stated, nor reason given for either of them to know as a matter of fact whether or not P.D. MARCHESSINI himself or others of his family were in fact citizens of the United States. Even the fact, if it is a fact, that P.D. Marchessini is claimed to be a Greek citizen, does not prove that he is not a citizen of the United States. Greece does not admit the right of a person of Greek extraction to lose Greek citizenship. As a result persons of Greek extraction very often have dual nationality and sometimes passports from each of the respective countries. In contrast to these unsubstantial statements there is attached hereto as Exhibit 12 of this affidavit an extract of a deposition of Mr. P.D. Marchessini himself. Reference to this extract will show that in answer to the direct question Marchessini states that he is "an American citizen", that the stockholders of that [SAN BASILIO] corporation are known to him, and they consist of himself and his family; consisting of himself, his two sons and his wife. Furthermore, he states that his wife is an American citizen.

Nor is this the only documentary proof of the citizenship of the stockholders of SAN BASILIO. Attached hereto is Exhibit 13, consisting of a certificate signed by Mr. P.D. Marchessini himself

certifying to the Chase Manhattan Bank that all of the stock of the SAN BASILIO company is owned by himself, his wife and his two sons. Again, as will appear from the memorandum herewith, ownership of the ship owning corporation by stockholders who are American citizens is by itself a sufficient basis on which to predicate liability under the Jones Act or the general Maritime Law.

THE SHIPOWNER HAS RECEIVED, PURSUANT  
TO UNITED STATES LAW, EXEMPTION FROM  
THE ANTI-TRUST LAWS OF THE UNITED  
STATES.

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As will appear further from the memorandum herewith the seven predicates of Lauritzen v. Larsen are not the only connecting factors upon which liability under the Jones Act or the general Maritime Law may be predicated. An additional factor has already been stated in this affidavit which has not heretofore been the subject of litigation - American stockownership of the foreign corporation and the base of the vessels actual operation have been. The factor is - that in order to operate in the foreign commerce of the United States, the defendant SAN BASILIO has been required to, and has in fact qualified pursuant to the United States law and by virtue of such qualification has obtained not only the profit deriving from commerce emanating from the United States, but additionally has obtained for itself exemption from the operation of United States Anti-Trust laws in their application to such

commerce. Certainly it is only appropriate that in seeking the benefit of the operation of United States law, that SAN BASILIO should at the same time be subject to the operation of such law under circumstances that may be less favorable than otherwise.

In summary, the plaintiff has demonstrated more than sufficiently for the purpose of summary judgment;

1. That the defendant SAN BASILIO has conducted its business including the operation of the particular vessel, the EURYATES, from a base in the United States.

2. The defendant SAN BASILIO, the shipowner, is owned by stockholders who are United States citizens.

3. The defendant has sought and obtained exemption from the operation of the United States Anti-trust laws in the operation of their business in the foreign commerce of the United States.

That these factors individually, and certainly in combination are sufficiently "substantial", as that term is defined in the applicable cases, to require the application of United States law to the complaint before the court.

Sworn to before me this  
20 day of August, 1975.

Herbert Lebovici

Herbert Lebovici

MAKING DEPOSIT  
With Clerk, United States District Court  
for the District of Columbia  
On 8/21/75  
Certified to New York County  
Supreme Court by Clerk of Court

REPLY AFFIDAVIT OF ALAN VAN PRAAG

STATE OF NEW YORK )  
                              : ss.:  
COUNTY OF NEW YORK)

ALAN VAN PRAAG, being duly sworn, deposes and says:

That he is an associate with the firm of POLES, TUBLIN, PATESTIDES & STRATAKIS, attorneys for defendants herein and is fully familiar with the facts in the instant action.

That this affidavit is made in reply to plaintiff's affidavit in opposition to defendants motion for summary judgment.

Plaintiff's counsel has failed to take cognizance that the sole grounds for making this motion was not merely forum non conveniens but on several other grounds as well, including lack of jurisdiction. The fact that a motion for summary judgment is made, including among the grounds as specified therein, the doctrine of forum non conveniens, does not preclude the Court from dismissing an action for improper service where other bases for dismissing the complaint are also raised.

It is ironic that plaintiff's counsel alleges that defendants moving papers lack sufficient supportive documentation while he in the same breath expects the Court to merely rely upon counsel's alleged past experiences in other litigation based upon other facts involving the manner in which CIA MARITIMA SAN BASILIO S.A. operates.

As will be evident from the accompanying memorandum of law, both Judge McLean of this Court and the Second Circuit Court of Appeals were of a completely different opinion as to

the methods and means by which defendants CIA MARITIMA SAN BASILIO S.A. and P. D. MARCHESSINI AND CO. (NEW YORK) INC. operate

All advertisements inserted into trade journals specifying P. D. MARCHESSINI AND CO. (NEW YORK) INC. as agent for either CIA MARITIMA SAN BASILIO S.A. or Sociedad Maritima San Nicholas S. A. is performed at the direct express behest of the owners agents in London. As the Court most assuredly will recognize, it is not unusual for agents to advertise at the direction of their principals.

The services performed by defendant P. D. MARCHESSINI AND CO. (NEW YORK) INC. were pursuant to an agency agreement which Courts have recognized does not cast the defendant CIA MARITIMA SAN BASILIO S.A. as having its base of operations from New York. At no point, in the lengthy affidavit submitted by plaintiff's counsel, does he allege that the crews for vessels owned by CIA MARITIMA SAN BASILIO S.A. were hired from New York or that P. D. MARCHESSINI AND CO. (NEW YORK) INC. managed, operated, ordered repairs or performed other types of services which would indicate that defendant CIA MARITIMA SAN BASILIO S.A. operated from New York.

It should be noted that plaintiff's Exhibit "8", an alleged sample of accounts contains normal ordinary items which are customarily prepared by port agents for the future operation and deployment of a vessel. These accounts are of no particular consequence because defendant P. D. MARCHESSINI AND CO. (NEW YORK)

INC. was merely performing an operation normally attributable to agents in the shipping industry. It should also be noted that these accounts reflect that P. D. MARCHESSINI AND CO. (NEW YORK) INC. was to receive commissions for services rendered (page 3 of plaintiff's Exhibit "8") and that almost all expenditures incurred were paid as a consequence of the vessel's presence in New York. Surely, if New York was the base of operations for the worldwide operations of defendant CIA MARITIMA SAN BASILIO S.A., this statement of account would reflect expenditures incurred on a worldwide basis on behalf of the vessel's owner.

As will also be seen from the accompanying memorandum of law, the fact that vessels owned by defendant CIA MARITIMA SAN BASILIO S.A. were subject to the Shipping Act of 1916 is not extraordinary because the Act itself specifies that all common carriers by water engaged in foreign commerce shall file their tariffs with the Federal Maritime Commission and be subject to the Act and not only carriers with a United States base of operations.

It is interesting to note that plaintiff at this point of time claims that answers to interrogatories were inadequate. Answers to interrogatories were served on the 6th day of February 1975, and no objection to those answers have ever been raised until plaintiff's affidavit in opposition.

It is also interesting to note that plaintiff overlooks the facts that in Lloyd's Register of Ships for the year 1968-69 through 1973-74 specifically recites that the owners of the

*the  
cases  
here  
and*

EURYBATES were defendant CIA MARITIMA SAN BASILIO S.A. with a port of registry of Piraeus, Greece. Our memorandum of law will conclusively indicate that it has long been held in this jurisdiction that the listing specified in Lloyd's Register of Ships indicates the owner of the vessel in question among other information. It should also be noted that all this information supplied as plaintiff's exhibits was available to the Court in other litigation and yet the Court did not find that defendant CIA MARITIMA SAN BASILIO S.A. utilized New York for its base of operations and dismissed the action.

With respect to plaintiff's allegations that insufficient proof was offered in support of defendants motion, the Court will recognize that defendants answers to interrogatories also form a part of the record herein and, most importantly, other Courts in this jurisdiction have ruled in favor of defendants in a precisely similar situation.

On the contrary, it is plaintiff who has submitted no evidence disputative of defendants motion for summary judgment. The putative evidence plaintiff submitted speaks for itself and other Courts have found that this same evidence was inadequate and granted defendants prayer for relief. It is obvious that the plaintiff is desirous of persuading United States Courts to decide this matter despite the fact that the overwhelming number of contacts indicate that this case should be adjudicated in a Greek forum.

With particular attention to plaintiff's allegations that the corporate ship owner in this action is owned by shareholders who are citizens of the United States, we rely upon the affidavit submitted by an officer of defendant CIA MARITIMA SAN BASILIO S.A. but will furnish to the Court Mr. P.D. Marchessini's renunciation of American citizenship which took place in 1962. It is noted that all the documents plaintiff alleges as being indicative of American citizenship are prior to 1962. Further, subsequent litigation involving the same defendants recognized that P. D. Marchessini was not an American citizen at that time. If the Court requires the actual Certificate of Renunciation, which is in Greece, it will be provided.

Thus, it is evident that there are insufficient contacts with the United States for this action to lie in these premises. At every turn, plaintiff's allegations have been proven to be specious and unsupported. Review by the Court of the documents submitted herein should lead to the conclusion that jurisdiction is not warranted by the facts of this matter.

WHEREFORE, it is respectfully requested that defendants motion be granted in all respects.

  
ALAN VAN PRAAG

Sworn to before me this  
27th day of August, 1975.

BEATRIX de MARKS DODD  
Notary Public, State of New York  
No. 21601115

NOTARY PUBLIC  
Commission Expires March 11, 1976

OPINION OF JUDGE CHARLES M. METZNER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

PANAGANGELOS ANTYPAS,	:	
	:	
Plaintiff,	:	
	:	
- against -	:	73 Civ. 4205
	:	(CMM)
CIA. MARITIMA SAN BASILIO S.A.,	:	
	:	
- and -	:	
	:	
P.D. MARCHESSINI AND CO. (HELLAS)	:	
LTD.,	:	
	:	
- and -	:	
	:	OPINION #43396
P.D. MARCHESSINI AND CO., (NEW	:	
YORK) INC.,	:	
	:	
- and -	:	
	:	
SS "EURYBATES," her boats, engines,	:	
tackle and apparel,	:	
	:	
Defendants.	:	

-----X

METZNER, D.J.:

Defendants move for dismissal of the complaint and for summary judgment on the ground of lack of jurisdiction, failure to state a claim upon which relief may be granted, improper service, and upon the further grounds of forum non conveniens.

This action was brought by a Greek seaman to recover for injuries allegedly sustained on June 19, 1972, aboard the S.S. "Eurybates" owned by defendant Cia. Maritima San Basilio S.A. At the time of this incident, the S.S. "Eurybates" was in the Pacific Ocean en route to the Far East.

The affidavits submitted by the parties establish that the contacts of the defendants with the United States as measured by the standards set forth in Lauritzen v. Larsen, 345 U.S. 571 (1953), are minimal. The only United States contact in this case is the presence here of defendant P.D. Marchessini & Co., (New York) Inc., which acted as a ship's agent while Cia. Maritima San Basilio S.A. vessels were in United States ports.

The S.S. "Eurybates" is a Greek flag vessel owned by a Panamanian corporation. Plaintiff is a Greek citizen presently residing in Greece. He signed on board the S.S. "Eurybates" in Rotterdam, pursuant to Greek ship's articles which provide for disputes to be settled according to Greek law. All the witnesses are foreign nationals. Plaintiff was treated for his injuries in Japan.

The evidence submitted by plaintiff is not sufficient to support its claim that the shipping line is controlled by American citizens from New York. In fact, plaintiff has failed

to distinguish the facts relating to the ownership and operation of the S.S. "Eurybates" by Cia. Maritima San Basilio, S.A. from those found to be true concerning its ownership and operation of another vessel in Garis v. Compania San Basilio S.A., 386 F.2d 155 (2d Cir. 1967).

The action is dismissed on the ground of forum non conveniens on condition that (1) defendants submit to the jurisdiction of the Greek courts, and (2) waive any defense of the statute of limitations as to any claims against them.

So ordered.

Dated: New York, N.Y.  
November 14, 1975

CHARLES M. METZNER  
U.S.D.J.

PLAINTIFF'S NOTICE OF APPEAL

S I R S :

NOTICE IS HEREBY GIVEN that the plaintiff hereby appeals to the United States Court of Appeals for the Second Circuit from the opinion and order of Judge CHARLES M. MEIZNER dated November 14, 1975 and entered on the same day declining jurisdiction of the case and dismissing the complaint.

Dated: New York, New York  
December 3, 1975

LEBOVICI & SAFIR  
Attorneys for Plaintiff

By: Herbert Lebovici  
A Member of the Firm

Office & P.O. Address  
15 Maiden Lane  
New York, N.Y. 10038

TO:  
POLES, TUBLIN, PAESTIDES & STRATAKIS, Esqs.  
46 Trinity Place  
New York, N.Y. 10006

CLERK OF THE UNITED STATES DISTRICT COURT  
Southern District of New York  
Foley Square  
New York, N.Y.

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X

PANAGANGELOS ANTYPAS,

Plaintiff-Appellant, :

- against -

CIA. MARITIMA SAN BASILIO S.A., and P.D. :  
MARCHESSINI AND CO. ( NEW YORK), INC., :

Defendants-Respondents. :

STIPULATION

-----X

IT IS HEREBY STIPULATED AND AGREED that the Exhibits referred to in the plaintiff's-appellant's opposing affidavits herein may be separately duplicated and copies separately filed with the Court of Appeals with the appendix herein.

Dated: New York, N.Y.  
December 30, 1975

LEBOVICI & SAFIR

By: Herbert Lebovici  
Attorneys for Plaintiff-Appellant

POLES, TUBLIN, PATESTIDES & STRATAKIS

By: Christ Stratakis  
Attorneys for Defendants-Respondents

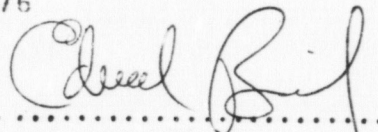
LEBOVICI & SAKIR Antypas v. Cia Martima

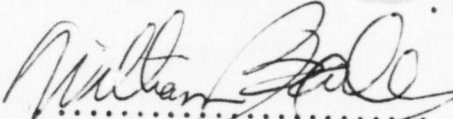
AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,  
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 5 day of Jan. , 19 76 at No. 46 Trinity Pl., NYC deponent served the within Appendix upon Poles, Tublin, Patestrides & Startakis, Esqs. the Appellees herein, by delivering a true copy thereof to the personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me,  
this day of Jan. 19 76

  
.....  
Edward Bailey

  
.....

WILLIAM BAILEY

Notary Public, State of New York

No. 43-0182945

Qualified in Richmond County

Commission Expires March 30, 1976

